IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO.84 OF 1998

Siel Financial Services Ltd. ...Plaintiffs
vs.
Nandan Gadgil ...Defendant

Mr.Priteshk Rajgor i/b M/s.PDS Legal for the Plaintiff
None for the Defendant

CORAM: A.S.OKA,J.
DATE : AUGUST 28,2007

JUDGMENT:

1. The suit is listed under the caption 'Undefended suits for exparte decree'.

2. According to the case of the plaintiff, an agreement of lease was executed by the plaintiff in favour of M/s.Western Paques (India) Ltd. in respect of the equipment more particularly described in Schedule 1 of the said agreement. The duration of the lease was of 7 years and quarterly rent was fixed at Rs.57,51,000/-. Reliance is placed on various clauses under the said lease agreement. According to the plaintiffs, a deed of guarantee dated 13th March 1995 was executed by the defendant in favour of the plaintiff by which the defendant unconditionally, absolutely and irrevocably guranteed the performance and due observance of the terms of the lease by the said lessee. According to the case of the plaintiffs the lessee has been in arrears of lease rent from April 1996. By a letter dated 12th June 1996, the plaintiffs

demanded the lease rent. The lessee along with the letter dated 20th July 1996 forwarded two cheques aggregating to Rs.30,00,000/- being the part payment towards the lease rental. It is stated that the lease rental payable on 14th July 1996 was not paid by the lessee. Correspondence was made by the plaintiff with the lessee calling upon the lessee to make payment of the amount. An Advocate's notice dated 8th July 1997 was issued to the lessee calling upon the lessee to pay the amount. On the same day, the Advocate for the plaintiff addressed a notice to the defendant calling upon the defendant to pay the amount payable under the agreement of lease by the lessee. It is stated that as the lessee has failed to pay the lease rental, the defendant is liable to pay the said amount along with the interest as agreed.

3. The plaintiff has tendered on record an affidavit of Mr.Deepak Sondhi who was the Vice President of the plaintiff at the relevant time. In the said affidavit, it is stated that the suit is based on a deed of guarantee dated 13th march 1995. He stated that the original documents have been misplaced. He stated that even after best efforts, the original documents could not be located. He stated that typed copies of the documents at Exhibit 'A' Exhibit 'F' are the copies of the originals.

4. In view of the said affidavit, a case is made out for

allowing the production of the typed copies of the original documents.

5. I have perused the agreement of guarantee dated 13th March 1995 executed by the defendant. Clause 3 of the said agreement reads thus :

"3. In the event of any default on the part of the Lessee in payment/repayment of any of the monies referred to above, or in the event of any default on the part of the Lessee to comply with or perform any of the terms, conditions and covenants contained in the Lease Agreement, the Gurantor shall, upon demand, forthwith pay to the Lessee without demur all the amounts payable by the Lessee under the Lease Agreement."

6. According to the case of the plaintiffs, the Advocate for the plaintiff called upon the defendant to pay the amount in terms of clause (3) by issuing notice dated 8th July 1997. In the said notice it was stated that a sum of Rs.2,91,57,828.16 with further interest on Rs.2,38,28,911/- at the rate of 2.5% per month from 27th June 1997 was due and payable by the lessee and therefore, the Defendant was liable to pay the said amount. It was pointed out that further lease rentals will be due and payable from 14th July 1997. In the plaint it is

stated that the defendant did not pay the amount. In the plaint it is asserted that the amount could not be recovered from the lessee notwithstanding the filing of a winding up petition by the plaintiff against the lessee. The learned counsel for the plaintiff stated that no amount has been paid by the lessee. There is no contest to the suit by the defendants. Thus, the case made out by the plaintiff will have to be accepted. The plaintiff has prayed for interest at the rate of 2.5% with monthly rests on compounded basis. Considering the facts and circumstances of the case, interest deserves to be awarded at the rate of 6% p.a.

7. Accordingly, the suit is decreed with a modification that interest payable on the principal amount will be at the rate of 6% p.a. from the date of institution of the suit till realization of the amount.

8. The plaintiffs will be entitled to refund of court fees as per the rules.

9. Certified copy is expedited.

JUDGE